



DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2019-06; FAR Case 2019-011; Item IV; Docket No. FAR-2019-0011; Sequence No. 1]

RIN 9000-AN93

Federal Acquisition Regulation: New World Trade

Organization Government Procurement Agreement Country-Australia

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to add Australia as a World Trade Organization Government Procurement Agreement (WTO GPA) country.

DATES: Effective: **[Insert date 30 days after date of publication in the FEDERAL REGISTER].**

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202-219-0202 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat

Division at 202-501-4755. Please cite FAC 2019-06, FAR Case 2019-011.

SUPPLEMENTARY INFORMATION:

I. Background.

On May 5, 2019, Australia became a party to the World Trade Organization Government Procurement Agreement (WTO GPA). The Trade Agreements Act (19 U.S.C. 2501 et seq.) provides the authority for the President to waive the Buy American Act and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States (such as the WTO GPA). The President has delegated this authority to the U.S. Trade Representative.

The U.S. Trade Representative has determined that Australia will provide appropriate reciprocal competitive Government procurement opportunities to United States products and services. The U.S. Trade Representative published a notice in the *Federal Register* (84 FR 18110, April 29, 2019) waiving the Buy American Act and other discriminatory provisions for eligible products from Australia.

II. Discussion and Analysis.

This rule adds Australia to the list of WTO GPA countries wherever the list appears in the FAR, whether as

a separate definition, part of the definition of "designated country" or "Recovery Act designated country," or as part of the list of countries exempt from the prohibition of acquisition of products produced by forced or indentured child labor (FAR 22.1503, 25.003, 52.222-19, 52.225-5, 52.225-11, and 52.225-23).

Conforming changes were required to FAR 52.212-5, Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items, and 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

Australia is already a designated country because it is a Free Trade Agreement Country.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This rule is not statutory and is not subject to 41 U.S.C. 1905 through 1907. The rule adds Australia to the list of WTO GPA countries to reflect the U.S. Trade Representative's determination. It applies to acquisitions over the WTO GPA threshold, as well as to acquisitions for commercial items and COTS items.

IV. Publication of this final rule for public comment is not required by statute

The statute that applies to the publication of the FAR is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it has no significant cost or administrative impact on contractors or offerors. It is just updating the lists of designated countries, in order to conform to the determination by the U.S. Trade Representative.

V. Executive Orders 12866 and 13563.

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VII. Regulatory Flexibility Act.

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section IV of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VIII. Paperwork Reduction Act.

The Paperwork Reduction Act (44 U.S.C. Chapter 35) does apply. However, this rule does not affect the response of an offeror that is offering a product of Australia to the information collection requirements in the

provisions at FAR 52.212-3(g) (5), 52.225-6, and 52.225-11.

Australia is already a designated country because it is a Free Trade Agreement country. These information collection requirements are currently approved under OMB Control Numbers 9000-0136 and 9000-0024, respectively.

List of Subjects in 48 CFR parts 22, 25, and 52

Government procurement.

William F. Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 22, 25, and 52 as set forth below:

1. The authority citation for parts 22, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT

ACQUISITIONS

22.1503 [Amended]

2. Amend section 22.1503 by removing from paragraph (b) (4) the words "Aruba, Austria," and adding "Aruba, Australia, Austria," in their place.

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

3. Amend section 25.003 by—

a. Removing from the definition "Designated country", paragraph (1), the words "Aruba, Austria" and adding "Aruba, Australia, Austria," in their place; and

b. Removing from the definition "World Trade Organization Government Procurement Agreement (WTO GPA) country" the words "Aruba, Austria," and adding "Aruba, Australia, Austria," in their place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.212-5 by revising the date of the clause and paragraphs (b) (26) and (48) to read as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

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CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS ([**INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER**])

* * * * *

(b) * * *

(26) 52.222-19, Child Labor—Cooperation with Authorities and Remedies ([**Insert Abbreviated Month and Year 30 Days After publication in the Federal Register**]) (E.O. 13126).

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(48) 52.225-5, Trade Agreements ([**Insert Abbreviated Month and Year 30 Days After publication in the Federal Register**]) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

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5. Amend section 52.213-4 by revising the date of the clause and paragraph (b) (1) (ii) to read as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

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TERMS AND CONDITIONS-SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL
ITEMS) ([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER PUBLICATION IN
THE FEDERAL REGISTER])

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(b) * * *

(1) * * *

(ii) 52.222-19, Child Labor-Cooperation with
Authorities and Remedies ([INSERT ABBREVIATED MONTH AND YEAR 30
DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]) (E.O. 13126).

(Applies to contracts for supplies exceeding the micro-
purchase threshold).

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6. Amend section 52.222-19 by revising the date of
the clause and removing from paragraph (a)(4) the words
"Aruba, Austria," and adding "Aruba, Australia, Austria,"
in their place.

The revision reads as follows:

**52.222-19 Child Labor-Cooperation with Authorities and
Remedies.**

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CHILD LABOR-COOPERATION WITH AUTHORITIES AND REMEDIES ([INSERT
ABBREVIATED MONTH AND YEAR 30 DAYS AFTER PUBLICATION IN THE FEDERAL
REGISTER])

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7. Amend section 52.225-5 by revising the date of the clause; and in paragraph (a) by removing from the definition "Designated country", in paragraph (1), the words "Aruba, Austria," and adding "Aruba, Australia, Austria," in their place.

The revision reads as follows:

52.225-5 Trade Agreements.

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TRADE AGREEMENTS ([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER
PUBLICATION IN THE FEDERAL REGISTER])

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8. Amend section 52.225-11 by—

a. Revising the date of the clause; and

b. Removing from paragraph (a), in the definition "Designated country", paragraph (1), the words "Aruba, Austria," and adding "Aruba, Australia, Austria," in their place.

The revision reads as follows:

52.225-11 Buy American Act—Construction Materials under Trade Agreements.

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BUY AMERICAN ACT —CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS ([INSERT
ABBREVIATED MONTH AND YEAR 30 DAYS AFTER PUBLICATION IN THE FEDERAL
REGISTER])

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9. Amend section 52.225-23 by—

a. Revising the date of the clause; and

b. Removing from paragraph (a), in the definition “Designated country”, paragraph (1), the words “Aruba, Austria,” and adding “Aruba, Australia, Austria,” in their place; and

c. Removing from paragraph (a), in the definition “Recovery Act designated country”, paragraph (1), the words “Aruba, Austria,” and adding “Aruba, Australia, Austria,” in their place.

The revision reads as follows:

**52.225-23 Required Use of American Iron, Steel, and
Manufactured Goods—Buy American Statute—Construction
Materials Under Trade Agreements.**

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REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS—BUY
AMERICAN STATUTE—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS ([INSERT
ABBREVIATED MONTH AND YEAR 30 DAYS AFTER PUBLICATION IN THE FEDERAL
REGISTER])

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